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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Advanced Television Systems and)
Their Impact Upon the Existing)
Television Broadcast Service)

MM Docket No. 87-268

To: The Commission

**COMMENTS
OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

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SUMMARY

The Personal Communications Industry Association ("PCIA"), pursuant to Section 1.415 of the Commission's rules and regulations, 47 C.F.R. §1.415, respectfully submits its Comments in response to the Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry ("Fourth FNPRM") in the above-captioned proceeding.

PCIA agrees with the Commission's four enumerated goals in this proceeding, and channel recovery is a critical goal after the transition to Advanced Television Systems ("ATV"). While a temporary grant of a second 6 MHz channel to existing broadcasters may be necessary to achieve an orderly transition to ATV, this temporary allocation should be tightly controlled and closely monitored by the Commission.

The primary use of the ATV channel must be for free broadcasting. Any other primary use is a waste of valuable spectrum. If the Commission does not mandate that the primary use of the channel must be for free broadcasting, then the Commission must make licenses available to all applicants, without an existing broadcaster eligibility test.

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The Personal Communications Industry Association ("PCIA"),¹ pursuant to Section 1.415 of the Commission's rules and regulations, 47 C.F.R. §1.415, respectfully submits its Comments in response to the Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry ("Fourth FNPRM") in the above-captioned proceeding.²

PCIA agrees with the Commission's four enumerated goals in this proceeding, which are:

- (1) to preserve a free, universal broadcasting service;

¹PCIA is an international trade association representing the interests of both commercial mobile radio service ("CMRS") and private mobile radio service ("PMRS") users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

²60 FR 42130.

(2) to foster an expeditious and orderly transition to digital technology that will allow the public to receive the benefits of digital television while taking account of consumer investment in NTSC television sets;

(3) to manage the spectrum to permit the recovery of contiguous blocks of spectrum; and

(4) to ensure that the spectrum -- both ATV channels and recovered channels -- will be used in a manner that best serves the public interest.³

Channel recovery is a critical goal after the transition to Advanced Television Systems ("ATV"). While a temporary grant of a second 6 MHz channel to existing broadcasters may be necessary to achieve an orderly transition to ATV, this temporary allocation should be tightly controlled and closely monitored by the Commission.

I. BACKGROUND

The genus of this docket must not be forgotten. The Fourth Further Notice is the latest Commission document in a proceeding which is now seven years old. Initially, the Commission sought to reallocate the unused broadcast spectrum in the UHF band for land mobile use.⁴ The proposed additional land mobile "sharing" of the band was based upon the findings of the Private Radio Bureau at the time which concluded: (1) that substantial growth in land mobile

³Fourth FNPRM at para. 6.

⁴Notice of Proposed Rule Making, Gen. Docket No. 85-172, 50 FR 25587 (Jan. 10, 1985).

services necessitated the allocation of additional spectrum⁵; and (2) a conclusion that the UHF channel assignment taboos were more stringent than required by then current television technology.⁶

For six months, PCIA participated in a series of meetings with broadcasters and other land mobile interests in an attempt to develop minimum field strength ratios for protection of UHF television stations by land mobile services.⁷ Two sets of comments were filed with the Commission in Gen. Docket No. 85-172 as a result of the joint working group, one by the broadcast community, one by the land mobile community.⁸

The one overwhelming conclusion evident from the efforts of the working group was that there was a significant amount of wasted spectrum in the UHF band which was directly adjacent to spectrum already used by the land mobile community.⁹

⁵See, Future Private Land Mobile Telecommunications Requirements, Final Report, Planning Staff, Private Radio Bureau, Federal Communications Commission, Washington, D.C., August 1983; Notice of Inquiry, PR Docket No. 82-10

⁶NPRM at para. 12. The so-called "UHF Taboos" are mileage restrictions which limit the ability to locate adjacent channel television stations in close proximity to existing stations.

⁷"Land Mobile, Broadcasters Fail To See Eye To Eye In Potential For Further Sharing", Industrial Communications, May 9, 1986 at p. 1.

⁸"Land Mobile, Broadcast Interests To Face Off Next Month Over More UHF Sharing", Industrial Communications, June 20, 1986 at p. 1.

⁹"[National Telecommunications and Information Administration Administrator Alfred] Sikes called attention to the inefficiencies created by UHF Taboos, which preclude the use of as many as 18 other channels in the same locale." "Sikes Tells NABER He Supports FCC's Advanced TV Inquiry; LMCC Avails Itself For HDTV Hearing In Letter To Market", Industrial Communications, September 18, 1987

Unable to successfully demonstrate that a relaxation of the UHF Taboos would lead to interference to television systems, broadcast interests changed their approach. Just prior to a Commission decision in the proceeding, the broadcast industry successfully lobbied on Capitol Hill and at the Commission, convincing the Commission to first review the implementation of advanced television systems before assigning unused broadcast spectrum for other uses.¹⁰

Since that time, the Commission has reviewed the feasibility of approving an advanced television system for broadcast purposes, considered allocations of spectrum for its use and reviewed proposed technical criteria.¹¹ The broadcast industry has spent the intervening years reviewing and evaluating proposals for different transmission systems through the establishment of the Advisory Committee on Advanced Television Service.¹² At this time, with an agreement apparently reached regarding a transmission

at p. 16.

¹⁰"Land Mobile/UHF-TV Sharing Item Delayed; FCC Considers Public Comment On Usage Study", Industrial Communications, March 13, 1987 at p. 1; Order, Gen. Docket No. 85-172, 63 RR 2d 1695 (1987); Public Notice No. 1650, March 27, 1987; Notice of Inquiry, MM Docket No. 87-268, 2 FCC Rcd 5125 (1987).

¹¹See, for example, Tentative Decision and Further Notice of Inquiry, MM Docket No. 87-268, 3 FCC Rcd 6520 (1988); First Report and Order, MM Docket No. 87-268, 5 FCC Rcd 5627 (1990); Second Report and Order/Further Notice of Proposed Rule Making, MM Docket No. 87-268, 7 FCC Rcd 3340 (1992); Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making, MM Docket No. 87-268, 7 FCC Rcd 6924 (1992);

¹²Fourth FNPRM, supra at para. 12.

standard in the form of a "Grand Alliance",¹³ a decision can now be made on these issues by the Commission.

Previously, the Commission had already decided on a transition plan that would require ATV licensees to simulcast 50 percent of their programming on the NTSC¹⁴ station beginning one year after the construction period and rising to 100 percent two years later.¹⁵ The Commission initially decided to establish a transition period of 15 years, recovering 6 MHz of spectrum at the end of the period.¹⁶

The Commission now seeks to review and revise these initial decisions, if appropriate. Because of the ability to simulcast up to four separate signals, the Commission now questions whether revision of the simulcast requirement is necessary.¹⁷ Further, the Commission now questions whether the transition period can be shortened.¹⁸

II. COMMENTS

A. ATV Systems Must Be Limited To Broadcast Related Services

The primary use of the ATV channel must be for free broadcasting. Any other primary use is a waste of valuable

¹³Id. at para. 15.

¹⁴"NTSC" is the current, analog television station, named for the National Television System Committee.

¹⁵Id. at para. 37.

¹⁶Id. at para. 48.

¹⁷Id. at para. 39.

¹⁸Id. at para. 53.

spectrum. With cable, direct broadcast satellite, MMDS and other services available to almost every home in the country, there is a multiplicity of video service offerings available to the public. The only rationale to permit existing broadcasters to convert to ATV systems using vacant spectrum is to preserve a free television option. If the Commission does not mandate that the primary use of the channel must be for free broadcasting, then the Commission must make licenses available to all applicants, without an existing broadcaster eligibility test.

In PCIA's view the introduction of an advanced television transmission system can be in the public interest. However, ATV licensees must be limited to broadcast programming related uses. As discussed below, if the FCC has any intention to provide more flexible service options for broadcasters (e.g. to provide mobile radio service), then broadcasters must compete in open auctions for the right to offer that service.

The technological advances and system developments in ATV which have occurred since 1987 raise a number of public interest issues that were not contemplated in 1985. With advanced transmission technologies, broadcasters now may have the ability to simulcast four or more separate, simultaneous program streams, including one HDTV video program, one or more associated audio services, data for ancillary services and a fourth information stream which could be filled with a heretofore undeveloped service.¹⁹ The question which now must be addressed is how the

¹⁹Id. at para. 17.

technological breakthroughs which have been made are compatible with the Commission's goals in this proceeding.

Further, services provided on the additional 6 MHz channel should be limited to broadcast programming or services related to broadcast programming. While PCIA believes that there should be no program limitations, there should be service restrictions. While PCIA does not propose that the Commission adopt any program restrictions for the second channel, PCIA does propose that the ATV licensee only be permitted to provide service similar or related to the services permitted by the original authorization.²⁰

**B. ATV Non-Broadcast Services Would
Unfairly Compete In The Marketplace**

PCIA acknowledges that the Grand Alliance system is capable of non-broadcast uses that are non-video and/or subscription-based in nature, such as dozens of CD-quality audio signals or an entire edition of the local daily newspaper.²¹ The FCC notes that allowing at least some level of flexibility would increase the ability of broadcasters to compete in an increasingly competitive marketplace, and would serve the public with new and innovative services.²²

Any flexibility given to broadcasters should not extend to the ability to offer mobile radio services (like paging) without open

²⁰Examples of related services would be closed captioning, pay programming, broadcast or narrowcast audio service and home shopping.

²¹Id. at para. 4.

²²Id. at para. 23.

competition for ATV licenses by all qualified applicants. The Commission must re-focus on its original goal of this proceeding, to promote a new broadcast television standard.²³ If the Commission determines that a need for ATV still exists, an ATV allocation should be made. However, converting existing broadcast systems to ATV systems should not be accomplished at the expense of non-broadcast licensees who offer critical services to the same American public that watches free over-the-air television.

Even on a temporary basis, diverting ATV/NTSC spectrum to land mobile use would have a devastating impact on all land mobile providers. For example, an ATV licensee would be able to offer paging service with spectrum given free by the Commission, subsidized by services provided over the other three "channels" in the ATV signal. It would be impossible for commercial or private paging licensees to compete in the marketplace. Similarly, broadband PCS licensees purchased licenses for hundreds of millions of dollars. Competing against a competitor who has obtained a free license would make it difficult, if not impossible, for the PCS licensee to recover the cost of the license, much less the considerable cost of constructing its system.

C. Transition Channels Must Be For Transition Only

A transition channel should only be allocated to existing broadcasters for the sole purpose of ensuring the conversion of existing broadcast systems to ATV service. Limiting eligibility in this situation might be appropriate to speed the transition.

²³See, page three above.

However, should the Commission go beyond the mere conversion to ATV broadcasting and allow for licensees to provide additional service, it is PCIA's interpretation of the Budget Act of 1993 that the Commission would have to make ATV licenses available to any applicant. As discussed above, any other decision unfairly advantages one class of licensees to the detriment of other service providers. Should the Commission be required to auction ATV licenses, a smooth transition from NTSC to ATV would not be possible, as some NTSC licensees would be able to afford ATV licenses in an auction, but others would not have the necessary funds. As a result, some licensees could perform the conversion, while other licensees would be left with no choice but to make a conversion to ATV some time in the future, without the benefit of a transition in which to continue to serve their audience.

**D. Non-Broadcast Services On ATV
Channels Would Require License Auctions**

Should the Commission permit ATV licensees to provide new services (other than free broadcasting and some limited ancillary services) over ATV spectrum, it appears that the Commission has no choice but to auction ATV licenses. In paragraph 28 of the Fourth FNPRM, the Commission claims that it is not creating a new service, instead that the Commission is ".... merely moving each existing broadcaster from one channel to a different channel in a one-for-one exchange..." However, to the extent that existing broadcasters can do more than offer broadcasting and limited ancillary services, the Commission is indeed creating a new service. In such an event, the Commission must accept applications from all applicants

consistent with Section 309 of the Communications Act, and auction the licenses in cases of mutual exclusivity. The Legislative History of the Budget Act of 1993 suggests that auctions are appropriate for new services.²⁴

**E. Contiguous Spectrum Should Be
Created From Returned Spectrum**

PCIA also agrees with the Commission's goal of creating contiguous spectrum when the transition channels are returned by ATV licensees. Contiguous spectrum would ensure maximum flexibility for future allotments, whether the ultimate licensee wishes to provide video service, audio service, data service or some mixture of the three. Although PCIA is not positioned to recommend the best method to achieve this result at this time, it is obvious that creation of contiguous channels would enhance the value of the spectrum for future licensees, and give the Commission numerous allocation options. Contiguous spectrum would also minimize interference problems from future allocations. However, whatever methodology is ultimately adopted by the Commission for recovery of spectrum, the Commission must insure that licensees are not able to "convert" the temporary authorizations to permanent authorizations for the entire 12 MHz bandwidth.

²⁴H.R. Rep. No. 103-111, 103d Cong. 1st Sess. (1993) at p. 590.

III. **CONCLUSION**

WHEREFORE, the Personal Communications Industry Association respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

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